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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,871	06/05/2001	Jan Malik	153-5916/PCT	5113

324 7590 01/05/2006

CIBA SPECIALTY CHEMICALS CORPORATION
PATENT DEPARTMENT
540 WHITE PLAINS RD
P O BOX 2005
TARRYTOWN, NY 10591-9005

EXAMINER

YOON, TAE H

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,871

Applicant(s)

MALIK ET AL.

Examiner

Tae H. Yoon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930).

DE teaches stabilizer compositions comprising a sterically hindered phenol, phosphorous-containing antioxidant and α -tocopherol in examples 2 and 4, and stabilization of polyethylene at page 2, lines 65-66. Masterbatch of claim 9 lacks any probative value absent particular amounts therein.

The instant invention further recites a higher amount of α -tocopherol and other species of sterically hindered phenol, phosphorous-containing antioxidant over DE. However, the use of such amount of α -tocopherol and other species of sterically hindered phenol, phosphorous-containing antioxidant is well known practice as taught by Keller et al (col. 4, lines 23-34, IRGANOX 1076 and 1035 of col. 5, lines 56 and 62 and Table I), JP (abstract) and Fukui et al (col. 3, lines 62-63 and table 2). Said IRGANOX 1076 and 1035 are also taught in the instant specification.

It would have been obvious to one skilled in the art at the time of invention to utilize the instant amount of α -tocopherol and other species of sterically hindered phenol, orphosphorous-containing antioxidant in DE with teaching of Keller et al, JP and Fukui et al since modifying amounts of additive mixtures is a routine practice in the art

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and since the use of a higher amount of α -tocopherol with respect to the amount of a sterically hindered phenol is well known as taught by Keller et al, JP and Fukui et al and since the broad disclosure of DE includes the instant sterically hindered phenol and phosphorous-containing antioxidant absent showing otherwise.

The above rejection is maintained with following response.

Applicant asserts that examples show unexpected result of the invention and points out table 4. However, the data such as CD-3 vs. I-1 and CD-4 vs. I-2 have little probative value since said CD-3 and CD-4 do not have ATP. Note that DE teaches a mixture of a sterically hindered phenol, phosphorous-containing antioxidant and α -tocopherol. Thus, said three components (with different ratios) must be present in examples for a fair comparison. Also, the recited polyethylene-based thermoplastic in claims 1-5 is an intended use, and thus any unexpected result of the claimed mixture and said polyethylene-based thermoplastic would not overcome rejection of claims 1-5.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930), and further in view of Tamura et al (US 6,096,814).

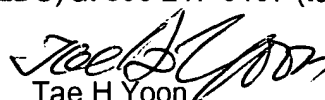
The invention further recites a master batch over DE. However, the use of a stabilizer with a polyolefin in a master batch form is well known practice in the art as taught by Tamura et al, col. 13, lines 41-47.

It would have been obvious to one skilled in the art the time of invention further to make a master batch pellet for a blend of a stabilizer mixture and polyolefin in DE and Keller et al JP and Fukui et al with teaching of Tamura et al since DE teaches the instant three components stabilizer mixture and its use with polyolefin and since the use of a stabilizer with a polyolefin in a master batch form is well known practice and since a master batch contains a higher amount of stabilizer absent showing otherwise.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tae H Yoon
Primary Examiner
Art Unit 1714

THY/December 27, 2005